

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**SCOTT HENRY RACE,**

***Plaintiff,***

**v.**

**CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,**

***Defendant***

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***No. 2:14-cv-166-DBH***

***RECOMMENDED DECISION ON MOTION FOR ATTORNEY FEES***

The plaintiff has applied for an award of attorney fees in the amount of \$6,000.00 under 42 U.S.C. § 406(b), after obtaining reversal and remand of an adverse decision by the commissioner, followed by an award of benefits at the administrative level. Motion for Award of Section 406(b) Attorney Fees (ECF No. 14); Motion to Amend Motion for Award of Section 406(b) Attorney Fees (ECF No. 15). When and if such an award is made, the plaintiff's attorney will return to him \$2,052.00 in attorney fees that were awarded to him under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. *Id.* The defendant does not oppose the requested award, but submitted a written "response" to the motion "in order to facilitate the proper administration of the attorney's fees provisions contained in Section 206(b) of the Social Security Act, 42 U.S.C. § 406(b)." Defendant's Response to Plaintiff's Motion for Award of § 406(b) Fees ("response") (ECF No. 16) at 1. I recommend that the plaintiff's motion be granted.

This court has dealt with similar requests in the past without difficulty. *See, e.g., Iezzi v. Astrue*, No. 2:09-10-GZS, 2011 WL 338639, at \*1-\*2 (D. Me. Jan. 31, 2011); *Quint v. Astrue*,

Civil No. 05-135-B-W, 2008 WL 4905482, at \*2 (D. Me. Nov. 12, 2008). The defendant does not suggest any reason to distinguish this request from those with which this court is already familiar.

The request for an award of attorney fees in this case in the amount of \$6,000 under 42 U.S.C. § 406(b) is reasonable. If the court adopts my recommendation that the plaintiff's request be granted, the plaintiff's attorney will remit to the plaintiff the EAJA attorney fee that he has received in this case, in the amount of \$2,052.00, upon receipt of the section 406(b) award.

**NOTICE**

***A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district court, if any is sought, within fourteen (14) days after being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.***

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.***

Dated this 11<sup>th</sup> day of December, 2015.

/s/ John H. Rich III  
John H. Rich III  
United States Magistrate Judge